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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,549	08/22/2003	Kathy S. Houchen		9138

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EXAMINER

HILL, LAURA C

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 01/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/645,549

Applicant(s)

HOUCHEN ET AL.

Examiner

Laura C. Hill

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 29 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### *Specification*

1. It is noted that the title has been amended as suggested by the Examiner in the previous Office Action.
2. The objection to page 4, paragraph 0020, lines 6-7 of the specification as previously stated has been removed.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-4, 6, 8 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Bonito (US 4,718,902; herein 'Bonito'). Regarding claims 1, 4, 6, 8, and 10 Bonito discloses inconspicuous panty 10 (column 1, lines 55-60) comprising: front and rear sections 24, 22 (column 1, lines 63-65 and figure 1) made of disposable silk, cotton or other suitable material (column 2, lines 67-68), an elastic waist band 17 stitched about the panty waist opening to provide a snug fit about the wearer's waist 16 (column 2, line 68-column 3, line 3), wherein a crotch portion is connected to the front portion and rear portion, comprises top and bottom portions 18,19 (column 3, lines 7-10) and includes panty liner/sanitary pad 11 made of disposable terry cloth 19 and fixed to the undergarment via stitching 30 for improved flexibility and wearing comfort (column 3, lines 11-42) and no extra padding in the front and rear portions (figure 1).

Regarding claims 2-3 Bonito discloses the front and rear portion of panty 10 define a frill/brief-style or bikini type undergarment (column 2, lines 57-61).

4. Claims 1-3 and 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Southwell (US 4,560,381; herein 'Southwell'). Southwell discloses a disposable woman's protective menstrual panty 21 that may be used with any size, type or shape of outer panty shell such as brief, bikini, etc and having depression means 43 for holding a feminine napkin (column 3, lines 61-column 4, line 6, column 5, lines 51-60, column 8, lines 48-60, figures 1-2) having front and rear portions 26 made of nylon/silk-like material (column 8, lines 1-5), waist elastic 32 (column 6, lines 62-68 and figure 15), wherein the front and rear portions do not have padding..

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. Claims 5, 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bonito (US 4,718,902; herein 'Bonito') in view of Johnson (US 3,237,625; herein 'Johnson'). Bonito *does not expressly disclose* panty liner/sanitary pad 11 is sandwiched between the top and bottom portion of the crotch portion. **Johnson** discloses a disposable brief-style baby panty 10 comprising front, back, and crotch portions 11, 12, 13 portion 12, elastic waist aperture, multi-layers 33, 34, 35/sanitary pad which draw and wick moisture away from the skin sandwiched between top and bottom portion that are secured to the first layer 20 of crotch portion 13 by means of stitching 36 and by binding strips/fusing 25, 26 (column 1, lines 59-64, column 2, lines 4-14, and lines 37-50, figures 1-3), said *crotch portion* 13 made of a polyamide, polyvinyl chloride, polypropylene, acrylic, modacrylic, polyester satin/silk-like material and said front and back portions made of cotton. One would be motivated to modify the sanitary pad of Bonito with the fused multi-layered pad of Johnson for enhanced absorbency protection since both references disclose sanitary panties with combination absorbent pads. Therefore, it would be obvious to one of ordinary skill in the art at the time the invention was made to modify the sanitary pad, thus providing a fused multi-layered pad.

### ***Response to Arguments***

6. In response to applicant's argument that 'Johnson is directed to a panty for a baby and does not disclose a sanitary pad' (see Remarks page 5), a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed

invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim.

7. In response to applicant's argument that the front and rear portion of Johnson include padding (see Remarks page 5), Johnson discloses a multi-layered absorbing sanitary pad but does not disclose any padding on the uppermost front and rear portions of the undergarments.

8. Applicant's arguments with respect to claims 1-2 and 4-10 under Johnson and claim 1 under Titone have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Laura C. Hill whose telephone number is 571-272-7137. The examiner can normally be reached on Monday through Friday (off every other Friday).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Laura C. Hill  
Examiner  
Art Unit 3761

LCH



TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

